

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR,  
et al.,

Plaintiffs,

Case No. 10-0189-CV-W-ODS

vs.

PREFERRED CREDIT CORPORATION,  
et al.,

Defendants.

## **EXHIBIT AB**

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**TO PLAINTIFFS' SUGGESTIONS IN OPPOSITION TO MOTION OF DEFENDANTS  
LITTON LOAN SERVICING, L.P. AND JP MORGAN CHASE BANK, NATIONAL  
ASSOCIATION, AS FORMER TRUSTEE TO DECERTIFY CLASS**

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IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

STEVEN and RUTH MITCHELL, )  
et al., )  
                              )  
                            Respondents, )  
                              )  
vs.                         )          No.  
                              )  
RESIDENTIAL FUNDING )  
CORPORATION, et al., )  
                              )  
                            Appellants. )

**AB**

IN THE CIRCUIT COURT OF MISSOURI  
JACKSON COUNTY, DIVISION 4  
Honorable Justine E. Del Muro, Judge

STEVEN and RUTH MITCHELL, )  
et al., )  
                              )  
                            Plaintiffs, )  
                              )  
vs.                         )          No. 03CV-2200489  
                              )  
RESIDENTIAL FUNDING )  
CORPORATION, et al., )  
                              )  
                            Defendants. )

RECORD ON APPEAL - TRANSCRIPT

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Julie M. DelPercio, Certified Reporter #516  
Official Court Reporter, Division 4  
Sixteenth Judicial Circuit of Kansas City

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1 statute. It's very much facilitating the jury's  
2 ultimate determination.

3 MR. SKEENS: I'm sorry. The HUD-1s tell  
4 you what happened in the transactions. That is  
5 what this case is all about. All Mr. Arnold is  
6 trying to do now is regurgitate what they argued  
7 at class certification. You have this horde of  
8 individualized inquiries that you have to dissect  
9 every one of these loans beyond what the HUD-1  
10 says, and the Court has already ruled in making  
11 this a class action that we don't have these  
12 individualized inquiries, that these are common  
13 and typical issues and that the HUD-1 tells you  
14 what was charged in each of these incidents and  
15 that is the document that proves the case.

16 So we don't need Professor Randolph to say,  
17 well, the HUD-1 may say X but really you've got to  
18 go do this, this and this. That is not the proper  
19 source of expert testimony, it's a legal opinion,  
20 it will confuse the jury, he ought not be allowed  
21 to testify.

22 MR. ARNOLD: Your Honor, they want to  
23 block it because they know that -- basically that  
24 is our response to their evidence, and they want  
25 to block this witness because it's very difficult

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1 try to put Finch on the stand to offer an opinion  
2 as to the economic benefits of these second  
3 mortgage loans. Mr. Finch testified that these  
4 economic -- or that the borrowers obtained an  
5 economic benefit in the form of a tax deduction or  
6 may be able to.

7 Missouri law is clear, I think the law across  
8 the country is clear, that not only does that not  
9 provide a defense in this case, whether they got a  
10 tax deduction or not doesn't have anything to do  
11 with any of the claims that were made; and  
12 secondly, the tax issues and tax deductibility of  
13 any recovery as a matter of law is inadmissible  
14 and excluded, it's irrelevant, it's unfairly  
15 prejudicial, etc.

16 The second aspect of Mr. Finch's opinions  
17 concern the interest savings. And what Mr. Finch  
18 wants to do is say, well, they traded out, that  
19 the borrowers traded out what was in effect  
20 unsecured credit card debt, and then they took  
21 that debt and wrapped it into their home diverting  
22 it to a secured debt at a lower interest rate.  
23 And again he says that was an economic benefit to  
24 the borrowers. For the same reasons that should  
25 be excluded, such a benefit, and it doesn't exist,

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1 for them to deal with it. Because they want to  
2 use this document, they want to basically give  
3 their version without any witnesses testifying  
4 about those documents or how they were -- a person  
5 actually involved in the transaction, okay, with  
6 respect to these 256 loans that my client  
7 purchased. So they are offering their version of  
8 the events. We need to be able to respond to that  
9 with this witness and our other witnesses.

10 THE COURT: Anything else?

11 MR. SKEENS: No, Your Honor.

12 MR. ARNOLD: Not on that issue.

13 THE COURT: Plaintiffs' motion in limine  
14 No. 1 is sustained.

15 Motion in limine No. 2.

16 MR. RICHARDS: Your Honor, motion in  
17 limine No. 2 deals with one of defendants'  
18 experts. This one is Charles Finch. Mr. Finch is  
19 an accountant and the bulk of his opinions are  
20 basically to counter or run some counter  
21 calculations to the Plaintiffs' expert Jack  
22 Krueger.

23 However, in addition to those counter  
24 calculations, as I call them, the defendants may,  
25 and I don't know if they intend to, but they may

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1 you are trading out unsecured debt for secured  
2 debt. And there is a whole number of reasons why  
3 these borrowers could have made the loans without  
4 charging all these fees, and having accomplished  
5 that --

6 THE COURT: Let's just stop you right  
7 there. Does the defense intend to put on  
8 Mr. Finch to state that these loans were actual  
9 benefits to the borrowers, yes or no?

10 MR. WILLIS: Yes, we do, Your Honor.

11 THE COURT: How does this aid in your  
12 defense?

13 MR. WILLIS: There is a number of  
14 reasons why these benefits, these economic  
15 benefits, are relevant to the case. First of all,  
16 it's relevant to the issue of damages. As to say  
17 actual damages under the SMLA is not defined. The  
18 case law should shed some light as to how you  
19 determine economic damages or actual damages and  
20 one of those things are the benefits versus the  
21 cost of the transaction.

22 THE COURT: Where do you find that?

23 MR. WILLIS: There is actually case law,  
24 Your Honor. We have cases with us here today, but  
25 basically there are cases that say, in determining

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1 actual damages one of the things you look at is 2 the benefits of the transaction versus the cost of 3 the transaction. The benefits in terms of the tax 4 savings as well as a reduction of an interest rate 5 from a high credit card rate down to a lower 6 second mortgage rate is an economic benefit 7 bestowed upon the Plaintiffs. It's relevant to 8 that issue, Your Honor.	1 take into consideration is when the borrowers 2 borrowed this money and the fees were disclosed to 3 them, did they evaluate this transaction with 4 regard to the economic benefits bestowed upon 5 them? And to the extent that the transaction 6 actually reduces interest rate and to the extent 7 that these people were motivated by tax savings, 8 then basically both the Missouri Supreme Court -- 9 I'm sorry, the Missouri Court of Appeals as well 10 as the United States Supreme Court says you have 11 to look at the totality of the transaction.
9 THE COURT: It's almost sounding like 10 you are trying to assert a mitigation of damages.	12 MR. WILLIS: It's not really. I 13 understand, Your Honor. Because it's sort of a 14 different case, I can understand the Court's query 15 about this. But it's really not a mitigation of 16 damages question, it's really a matter of how the 17 jury measures the amount of damages. And again, 18 it's a situation just like you do in any 19 transaction, you look at the benefits, you look at 20 the costs.
21 THE COURT: Have you looked at our 22 instructions on measure of damages? MAI is pretty 23 instructive on measure of damages and I don't 24 recall ever seeing benefits to a borrower being 25 one of those elements.	26 MR. WILLIS: What the jury is actually 27 Page 158
1 going to have to make a determination on is what 2 is the amount of damages. Then one of the things 3 they take into account is the benefits versus the 4 cost of the transaction. We do intend to assert 5 it for that purpose.	1 the instruction does not say we get to factor in 2 benefits or that evidence of -- economic evidence 3 of a benefit is in any way admissible.
6 There is also another very significant 7 purpose, Your Honor, with regard to the issue of 8 punitive damages. Both the United States Supreme 9 Court as well as several Missouri cases address 10 the amount of punitive damages, saying that you've 11 got to look at the entire economic circumstance of 12 the transaction. You've got to -- you just don't 13 focus on one specific element, you look at the 14 benefits that are bestowed upon the Plaintiff by 15 reason of how the transaction affected them.	4 With regard to the claim for punitive 5 damages, the Supreme Court opinion doesn't say 6 that inadmissible evidence concerning the benefits 7 of a transaction can be considered, and that is 8 what we have here. For the reasons that we have 9 said, you know, this idea of a benefit conveyed to 10 these people should be excluded. It's undisputed. 11 I think that that is the law.
12 THE COURT: Anything else? 13 MR. WILLIS: One additional thing I 14 think is pretty important to draw the Court's 15 attention to. I'm going to show you, if I can 16 invite the Court's attention, this is a Missouri 17 Court of Appeals case, it's Moore versus 18 Missouri-Nebraska Express, 892 S.W. 2d 696 out of 19 the Western Court of Appeals, 1994 decision. If I 20 can, Your Honor, we have highlighted some of the 21 language in the case.	12 But one of the things the jury is entitled to 13 Page 159
	22 What I would like to invite the Court's 23 attention to, you see in the pink highlight there, 24 it talks about you have to look at the entire 25 transaction when assessing punitive damages. But 26 Page 161

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1 one of the things the Missouri Court of Appeals  
2 says --  
3 THE COURT: It's addressing mitigating  
4 circumstances.  
5 MR. WILLIS: Exactly.  
6 THE COURT: Didn't I say this sounds  
7 like --  
8 MR. WILLIS: On punitive damages, Your  
9 Honor, the evidence and the benefits is  
10 admissible. Perhaps on actual damages it may not  
11 be, Your Honor, but on punitive damages the  
12 evidence of mitigation of circumstances is  
13 admissible, because again, it's consistent with  
14 this entire notion. You have to look at the  
15 totality of the circumstances. You can't just  
16 take a -- focus on one thing, you have to  
17 determine whether or not basically the defendants'  
18 conduct was justifiable in some respect.  
19 Again, we get to the point that they are  
20 going to be in dispute in this case about the fact  
21 that all these borrowers have these fees  
22 specifically disclosed to them in writing. So the  
23 jury I think is entitled to determine what  
24 motivated the borrowers here. Was it the benefits  
25 they received both in terms of interest reductions

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1 offer --  
2 THE COURT: My concern is you are almost  
3 suggesting that in a case like this the Plaintiffs  
4 have a duty to mitigate their damages. These  
5 people took out loans probably with the  
6 understanding, I mean, most people take out loans  
7 because they do want to reap a benefit, they want  
8 to get out from a higher interest rate, they want  
9 to, you know, secure an interest rate and avoid  
10 credit card, that's a given.

11 To state that under the law they are required  
12 to come in with that kind of mitigating evidence,  
13 that doesn't exist in this lawsuit. I don't  
14 understand how this evidence comes in, A, as a  
15 defense; and B, as a mitigation of damages,  
16 especially in actual damages, not taking away the  
17 punitive damage aspect, which has been bifurcated.  
18 I think I saw a motion asking for bifurcation. So  
19 that's a separate element that is not going to  
20 become a part of the case in chief.

21 I really am struggling to understand how you  
22 can assert or bring in evidence that these  
23 people -- or that you, maybe that is what you are  
24 trying to argue -- that the defendants should not  
25 have a verdict against them because these people,

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1 as well as tax savings.  
2 THE COURT: Anything else?  
3 MR. RICHARDS: The only other thing, and  
4 maybe this is so obvious, Your Honor, that I  
5 didn't say it. If you look at the statute, the  
6 statute lays out what the damages are. 408.562  
7 says, you shall recover your actual damages, and  
8 under established Missouri law those actual  
9 damages do not include a benefit. And they want  
10 to argue that -- I don't even know how they would  
11 show a benefit with any degree of certainty in  
12 arguing that punitive damages shouldn't be  
13 assessed. It is mitigation of damages and it is  
14 inadmissible and that opinion from the Supreme  
15 Court doesn't say we are going to allow otherwise  
16 inadmissible evidence to be considered by a jury  
17 in determining punitive damages.

18 MR. WILLIS: One final note, Your Honor,  
19 with regard to how it's going to be demonstrated.  
20 Our expert Mr. Finch has actually gone through  
21 calculations, he has actually ground through the  
22 numbers, he testified about those in his  
23 deposition and it's marked as an exhibit. So it's  
24 not speculation. He has actually gone through and  
25 calculated the benefits and he's prepared to

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1 irrespective of any violations of law, gained a  
2 benefit. That is what it's sounding like to me.  
3 Is that what you are really asserting?

4 MR. WILLIS: Let me see if I can break  
5 that down for the Court. As I understand your  
6 comment, it sounds like you are willing to at  
7 least entertain the possibility that we might be  
8 able to submit with regard to punitive damages.

9 THE COURT: I have to look at this case.  
10 I was just looking at the facts and they are not  
11 really identical at all. There are two issues  
12 here. You are saying yes, it's important in  
13 punitive damages, but I can't -- let's just talk  
14 about case in chief.

15 MR. WILLIS: Actual damages,  
16 Mr. Richards is right, the Missouri SMLA says that  
17 the jury determines the amount of actual damages.  
18 What the problem is, Your Honor, is that the SMLA  
19 does not define what actual damages are. So if  
20 you look back at the case law, what it basically  
21 says is a matter of comparing the benefits versus  
22 the cost. I think the jury is entitled to make a  
23 determination. For example, the jury is entitled  
24 to make a determination.

25 One of the things they want to do, Your  
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1 Honor, is they want to recover all of the past  
2 interest that has been paid in the case. That is  
3 part of the claim that they are making in this  
4 case. Even though the past interest was fully  
5 disclosed to borrowers, even though it was  
6 disclosed to the borrowers in writing, and even  
7 though presumably that is the very reason they are  
8 taking out the loan in the first place.

9 To the extent they want to penalize the  
10 defendants in this case by having them pay back  
11 all of the past interest in this case, one of the  
12 things I think the jury is entitled to take into  
13 consideration is these people, did they get some  
14 benefits. Before we penalize these people who  
15 bought these loans, shouldn't the jury take into  
16 account what benefit motivated these people before  
17 you are going to punish or penalize or have the  
18 defendants disgorge all of the past interest in  
19 the case.

20 THE COURT: I don't think that is  
21 relevant to an issue of whether or not these  
22 defendants violated a law and unnecessarily  
23 assessed fees. That has no bearing on whether or  
24 not these borrowers gained a benefit. I don't see  
25 it at this time. These are motions in limine.

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1 on this issue?

2 THE COURT: Sure.

3 MR. RUSKAMP: Part of this issue really  
4 does require some context, and what I would like  
5 to suggest to the Court is that it's important to  
6 ultimately understand what we expect the  
7 Plaintiffs' case in chief to be on this issue,  
8 particularly as Mr. Willis' points were related to  
9 punitive damages.

10 What we are faced with here really is an  
11 effort to put evidence in I anticipate in their  
12 case in chief that is largely unrelated to  
13 anything these defendants did. And frankly,  
14 largely unrelated to anything having to do with  
15 the loans in this case. Things like guilty pleas  
16 on other issues, alleged violations by MCR with  
17 respect to the origination of loans that has  
18 nothing at all to do with the Missouri loans or  
19 the violation or alleged violation of the Missouri  
20 statute.

21 THE COURT: Are you talking about your  
22 other motions in limine regarding the two  
23 convicted felons?

24 MR. RUSKAMP: I'm talking about that but  
25 also just from a broader perspective. What the

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1 I'm going to sustain it right now. Unless you can  
2 prove to me with some concrete on point case law,  
3 I just don't think it's appropriate.

4 MR. WILLIS: Your Honor, can I ask a  
5 clarification question here? With regard to the  
6 admissibility benefits on the punitive damage  
7 phase, will the Court allow us to come back and  
8 readdress that issue?

9 THE COURT: As I said, motions in limine  
10 are preliminary rulings. If you find something  
11 somewhere that requires me to reconsider any of  
12 the rulings that I make today I will be happy to  
13 do that.

14 MR. WILLIS: Thank you, Your Honor.

15 THE COURT: No. 3.

16 MR. RICHARDS: Your Honor, motion in  
17 limine No. 3 is motion in limine No. 2 except it's  
18 expanded to include anybody else. No evidence  
19 regarding alleged benefits. It's not limited to  
20 Chuck Finch, it's limited to anybody else that  
21 might jump in the box.

22 THE COURT: Is that understood?

23 MR. WILLIS: Our response would be the  
24 same, Your Honor.

25 MR. RUSKAMP: Your Honor, may I be heard

1 Plaintiffs' case in chief will ultimately be is  
2 not just simply the HUD-1s and these fees. There  
3 is going to be sort of a second wave that comes in  
4 by way of an expert named Rebecca Walzak and Margo  
5 Saunders, and what I would like to respectfully  
6 suggest to the Court, that on this benefit issue  
7 what we are really talking about here is having a  
8 fair and balanced perspective on our ability to  
9 present to the jury a full picture on what the  
10 circumstances are.

11 Now, if all of that extraneous criminal  
12 convictions and these defendants are bad guys  
13 doesn't come in, then I think questions about  
14 benefit and issues about benefit may -- the points  
15 may very well be well taken, but otherwise, you  
16 truly are creating a situation where the  
17 Plaintiffs are going to off load all of this  
18 information into the case and the defendants are  
19 left without really anything at all to say.

20 THE COURT: Mr. Ruskamp, I don't really  
21 know what you want me to say in response to that  
22 sort of global request. I don't know what the  
23 Plaintiffs intend to drag in or what issues you  
24 are concerned about, and if you have concerns  
25 specifically raise them now because that is what

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<p>1 off of work to sit here, just like everybody else,      2 and that is about it, Your Honor.</p> <p>3 MR. ARNOLD: Your Honor, we are not      4 going to dispute any of that. It's not going to      5 be a matter for the jury to decide. It's for the      6 Court to decide if it's going to be awarded and it      7 shouldn't be put before the jury.</p> <p>8 MR. MARTIN: I'll join.</p> <p>9 MR. RUSKAMP: Yes.</p> <p>10 THE COURT: I don't see the relevance.      11 Sustained.</p> <p>12 (The proceedings returned to open court.)</p> <p>13 Q. <b>(By Mr. Skeens) Mr. Mitchell, what do you -- what      14 would you like to recover on behalf of yourself      15 and the class?</b></p> <p>16 A. For myself and the rest of the class members we      17 would just like to recover what is allowable under      18 the law, whatever that might be, but whatever is      19 allowable under the law.</p> <p>20 MR. SKEENS: Thank you.</p> <p>21 THE COURT: Cross?</p> <p>22 CROSS-EXAMINATION</p> <p>23 BY MR. ARNOLD:</p> <p>24 Q. <b>Mr. Mitchell, just very briefly. My name is Roy      25 Arnold and I represent Residential Funding. I</b></p>	<p>1 were.</p> <p>2 Q. <b>Do you know as a class representative how many of      3 the loans were purchased by Household?</b></p> <p>4 A. I believe my attorney told me at one time. I      5 think it was about 34 or 35, something like that.</p> <p>6 Q. <b>And your testimony is that you didn't have any      7 contact with anybody at Household in connection      8 with this particular loan from MCR; is that right?</b></p> <p>9 A. I didn't have any contact with them directly, no.</p> <p>10 Q. <b>You haven't had any contact with any borrowers      11 whose loans were purchased by Household that were      12 originated by MCR, have you?</b></p> <p>13 A. No, just other than some of the work that was      14 filed with the Court early on I read through it, I      15 briefed through it and some were. But other than      16 reading that, no, I didn't talk to them      17 personally, no.</p> <p>18 Q. <b>You haven't had any discussions with them?</b></p> <p>19 A. That's correct.</p> <p>20 Q. <b>You don't know anything about the circumstances of      21 the closing of their loans?</b></p> <p>22 A. No, I don't.</p> <p>23 Q. <b>And is it the case that you had a prior loan with      24 Household in your past?</b></p> <p>25 A. Way back when I was young, yes, I believe I did,</p>
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<p>1 <b>just want to make sure the record is clear on one      2 thing. You paid off your loan in late -- your MCR      3 loan in late 2001, early 2002, correct?</b></p> <p>4 A. Correct.</p> <p>5 Q. <b>And you paid it off by obtaining a larger first      6 mortgage from Bank of America?</b></p> <p>7 A. That is correct.</p> <p>8 Q. <b>And you then sold your home; isn't that right, in      9 Blue Springs?</b></p> <p>10 A. No, not until many years later. In fact, about a      11 year and a half ago.</p> <p>12 Q. <b>But you paid off the loan and then you got your      13 Bank of America loan, and then you sold your      14 house, right?</b></p> <p>15 A. Correct.</p> <p>16 Q. <b>I just wanted to make sure that was clear. Thank      17 you. No further questions.</b></p> <p>18 THE COURT: Mr. Ruskamp?</p> <p>19 MR. RUSKAMP: Thank you, Your Honor.</p> <p>20 CROSS-EXAMINATION</p> <p>21 BY MR. RUSKAMP:</p> <p>22 Q. <b>Mr. Mitchell, so that I'm clear on your testimony,      23 your loan was not purchased by Household, was it?</b></p> <p>24 A. My particular loan wasn't, but it's my      25 understanding that some members of the class loans</p>	<p>1 just a signature loan or something like that, a      2 collateral loan. I'm not really sure but I was      3 very young at the time.</p> <p>4 Q. <b>When you say collateral loan, you mean it was      5 secured by something?</b></p> <p>6 A. Something, yes, probably a used car, something      7 like that.</p> <p>8 Q. <b>I assume you paid that loan off at some point in      9 time?</b></p> <p>10 A. Yes.</p> <p>11 Q. <b>Was your experience with Household satisfactory      12 relative to that loan?</b></p> <p>13 A. As far as I can remember, it's been so long ago,      14 but yes, I believe it was.</p> <p>15 MR. RUSKAMP: Thank you, Mr. Mitchell.</p> <p>16 THE COURT: Mr. Martin?</p> <p>17 MR. MARTIN: Could we approach?</p> <p>18 (Counsel approach the bench and the following      19 discussion was had:)</p> <p>20 MR. MARTIN: I want to make sure I get      21 it clear because I know that we had some issues      22 about collateral issues, whether this is a good      23 deal for them, that kind of stuff. What I want to      24 do is ask Mr. Mitchell -- we heard this testimony      25 today about how they got this loan because they</p>
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<p>1        wanted to save some money and that they were      2        saving money, I want to find out how much money,      3        and it won't take very long to do that, but if the      4        documents they lay out what they were paid before      5        and I want to just add those numbers up with him      6        and show that this is his savings.</p> <p>7            MR. SKEENS: I thought we had agreed      8        that we weren't going to have evidence about what      9        a great deal this was for any of these people or      10       anything like that. It was just about whether      11       these fees were illegal or not. I would object on      12       relevance grounds, Your Honor.</p> <p>13            MR. MARTIN: All this evidence, I'm      14        pulling it out of the documents they put in the      15       record.</p> <p>16            MR. SKEENS: I thought we had a motion      17        in limine on this that was sustained.</p> <p>18            MR. MARTIN: We did. That is why I'm      19        bringing this up. I think they opened the door.      20        I think we should have been able to get into this      21        information before. That is why you get these      22        loans, you want to save money. How much money did      23        they save. It's just the extension of what he      24        testified to on direct.</p> <p>25            THE COURT: Anything else? The</p>	<p>1        BY MR. MARTIN:</p> <p>2            Q. Mr. Mitchell, I represent Wachovia. Sometimes you      3        will hear HomEq. At the time that you got your      4        loan it would have been The Money Store. Do you      5        have any information about the way that Wachovia      6        dealt with any of the borrowers or the way that      7        HomEq dealt with any of the borrowers or The Money      8        Store?</p> <p>9            A. Again, as I told the other attorney, just through      10       documents that I reviewed trying to prepare for      11       this so I would have background on the other      12       people that were involved in the class with me. I      13       seen the stampings a little bit in some of the      14       documents, but other than that, no.</p> <p>15            Q. So nothing that your loan had -- no part of your      16       loan had anything to do with Wachovia or HomEq or      17       The Money Store; is that right?</p> <p>18            A. That's correct.</p> <p>19            MR. MARTIN: I have no further      20       questions.</p> <p>21            THE COURT: Anything else?</p> <p>22            MR. SKEENS: No redirect, Your Honor.</p> <p>23            THE COURT: Sir, you may step down.      24            (Witness excused.)</p> <p>25            THE COURT: Call your next witness.</p>
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<p>1        objection is overruled. Your request is denied.      2        I can't let you get into what benefits these      3        parties obtained as a result of the loan. I'm      4        sticking to my ruling on the motion in limine. He      5        didn't open the door. He went through a document      6        explaining the purpose of the loan. That is the      7        extent of the testimony.</p> <p>8            MR. MARTIN: Can I have like 30 seconds      9        to make an offer of proof on this?</p> <p>10            THE COURT: Right now?</p> <p>11            MR. MARTIN: Yes.</p> <p>12            THE COURT: Sure.</p> <p>13            MR. MARTIN: He had a loan from Concord      14        where he was paying \$62 a month. He had a loan      15        from MBNA where he was paying \$181 a month. He      16        had a loan from Discover Financial he was paying      17        \$134 a month. All total that was \$477 a month.      18        His new payment was \$236.71. The savings to him      19        was \$240.29. All that is in the records that they      20        just introduced into evidence.</p> <p>21            THE COURT: You made your offer of      22        proof. I'm going to maintain my ruling. You may      23        proceed.</p> <p>24            (The proceedings returned to open court.)</p>	<p>1        MR. SKEENS: The Plaintiffs at this time      2        call Ruth Mitchell, Your Honor.</p> <p>3            THE COURT: Step up into the witness      4        box. Raise your right hand.</p> <p>5            RUTH E. MITCHELL,      6        having been sworn by the Court testifies as follows:      7            DIRECT EXAMINATION</p> <p>8            BY MR. SKEENS:</p> <p>9            Q. Can you tell us your name?</p> <p>10            A. Ruth E. Mitchell.</p> <p>11            Q. Mrs. Mitchell, you are likewise a Plaintiff in      12        this case?</p> <p>13            A. Yes.</p> <p>14            Q. Along with your husband Steve?</p> <p>15            A. Correct.</p> <p>16            Q. And are you here on behalf of the class in      17        addition to yourself?</p> <p>18            A. Yes, I am.</p> <p>19            Q. Where are you from originally, Mrs. Mitchell?</p> <p>20            A. A little town in Illinois called Belleville,      21        Belleville, Illinois.</p> <p>22            Q. Obviously at some point you end up in Kansas City.      23        When was that?</p> <p>24            A. Late '89, early 1990.</p> <p>25            Q. And when did you and Steve -- you and Mr. Mitchell</p>
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<p>1      <b>what you said?</b></p> <p>2      A. It would be catastrophic circumstances, yes.</p> <p>3      <b>Q. And that was your description of the catastrophic</b>  <b>4      circumstances?</b></p> <p>5      A. That would be one example. I think that is one we  6      can all somewhat understand.</p> <p>7            MR. WALTERS: No further questions.</p> <p>8            THE COURT: Anything else?</p> <p>9            MR. ARNOLD: No, Your Honor.</p> <p>10          THE COURT: Sir, you may step down.</p> <p>11          (Witness excused.)</p> <p>12          THE COURT: Ladies and gentlemen of the  13          jury, we are going take a lengthy recess. We will  14          be in recess until 1:30 today. Have a good  15          afternoon.</p> <p>16          (The following proceedings were had in the  17          courtroom out of the presence of the jury:)</p> <p>18          MR. WILLIS: We are going to talk about  19          these proffers on Mr. Finch's testimony. What I  20          propose to do is we have got a number of these  21          written proffers. We have got them marked with  22          exhibit stickers here, and I thought I would just  23          hand those written proffers up to the Court, sort  24          of summarize our position, Mr. Richards can give  25          his response to it, and then the Court can rule on</p>	<p>1      appropriate.</p> <p>2            THE COURT: This is really an offer of  3      proof, correct?</p> <p>4            MR. WILLIS: Yes, it's a proffer of what  5      we expect Mr. Finch's opinion would be.</p> <p>6            THE COURT: And I have already sustained  7      this. So I will just put on this document that  8      it's sustained as well.</p> <p>9            MR. MARTIN: Your Honor, just for the  10          record --</p> <p>11          THE COURT: Or overruled, I should say.  12          Sorry.</p> <p>13          MR. MARTIN: I would like to join in the  14          set of proffers on behalf of Wachovia Equity  15          Servicing. I also think that for all of these --</p> <p>16          THE COURT: I think you are all signed  17          off on these.</p> <p>18          MR. MARTIN: Okay. And I think also,  19          especially with regard to the testimony we just  20          heard about defaults and default rates and  21          assuming what percentage of these folks defaulted,  22          I think all this evidence should come in directly.  23          They have clearly opened the door. We have been  24          talking about default rates with multiple  25          witnesses and this one exactly.</p>
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<p>1      them.</p> <p>2            The first proffer we have has been marked as  3      Exhibit 1148. It is an opinion with regard to  4      borrowers who should be excluded from the class.  5      Mr. Finch is prepared to give an opinion that  6      certain borrower's damages should be excluded by  7      reason of bankruptcy, discharge or write-off or  8      death.</p> <p>9            The Court has already ruled in response to  10       motions for summary judgment and motions in limine  11       that this should be excluded. So we are  12       proffering Exhibit 1148 as our proposed evidence  13       on Mr. Finch's opinion with regard to the  14       borrowers who should be excluded from the class.</p> <p>15          MR. RICHARDS: Your Honor, for the  16       record, and I didn't catch the exhibit number on  17       that.</p> <p>18          MR. WILLIS: 1148.</p> <p>19          MR. RICHARDS: For this and each of the  20       other proffers we disagree, I think I need to  21       state for the record, we disagree with the  22       recitation that they put in the background section  23       of each of these. Having said that, with regard  24       to Exhibit 1148, we do object to the opinions as  25       proffered and don't believe that they are</p>	<p>1      THE COURT: Anything else?</p> <p>2          MR. RICHARDS: No.</p> <p>3          THE COURT: The ruling will remain.</p> <p>4          MR. WILLIS: Next we have Exhibit 1156.  5          Exhibit 1156, Your Honor, is the proffer by the  6          defendants of Mr. Finch's opinion with regard to  7          the so-called benefits to the borrowers. If  8          allowed to testify Mr. Finch would give an opinion  9          that the various Plaintiff borrowers in the case  10       derived certain benefits by reason of these loans  11       in the form of either interest rate deductions,  12       tax savings or cash flow savings.</p> <p>13          Again, just for the record, the Court I think  14       has ruled in response to motions in limine filed  15       by the Plaintiffs in the case that benefits to the  16       borrowers should not come into the case. So we  17       are proffering Exhibit 1156 on that basis.</p> <p>18          MR. RICHARDS: We don't dispute what he  19       said there. That that is the Court's ruling, and  20       we believe it's inappropriate.</p> <p>21          THE COURT: That will be overruled.</p> <p>22          MR. MARTIN: Next, Your Honor, we have  23       Exhibit 1149. Exhibit 1149 is Mr. Finch's  24       opinions with regard to the so-called discount  25       fees. And if allowed to testify Mr. Finch would</p>
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